BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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In the matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	C. C. Docket No. 96-128

PETITION FOR CLARIFICATION

The undersigned individual presents this Petition for Clarification on behalf of Bulletins, a small independent processing company to the payphone industry. Bulletins is a company who acts as agent for approximately 60 payphone service providers ("PSP's"), representing their interests for the tracking, billing and collection of payphone dial around compensation. This petition is to request to obtain what appears to be a necessary clarification regarding the Commission's recent Second Order on Reconsideration ("Order"), FCC Number 01-109, Common Carrier Docket 96-128, released April 5, 2001. This Order significantly altered the Commission's policy regarding liable parties to pay us PSP's the so-called dial around compensation.

In its endeavor to provide for payphone service providers a less burdensome collection environment for payphone compensation, the Commission in this Order reduced the number of carriers who are directly liable for payment of compensation to the PSP's. However, the resulting revised regulation appears to have two very noticeable and adverse side effects, which threaten the realization that "each and every call" from a payphone is compensated, as required by statute

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under Section 276 of the Telecommunications Act. First, the Commission's new policy has seemingly relieved certain local exchange carriers ("LEC's"), particularly RBOCs and other incumbent LECs, from their obligation to pay for calls for which they are the facilities-based carrier. Second, interexchange carriers ("IXC's") are now provided a basis for exempting calls originated from payphones served by Competitive Local Exchange Carriers ("CLEC's"). Bulletins would ask the Commission to issue a clarification on whether these side effects were the intention of the recent Order. Specifically the Commission needs to resolve ambiguous language in the new regulation and address whether local exchange carriers continue to remain liable to PSP's for dial around compensation for coinless calls terminated within their own local exchange networks.

APPARENT FLAW IN THE CODIFIED REGULATION

Prior to the adoption of the Order, Commission regulations at section 64.1300(a) read:

> "Except as provided herein, every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract." (47 C.F.R. § 64.1300(a) prior to 4-5-01)

This older language plainly insured that each and every call originating from a payphone was due to be compensated to a PSP. Unfortunately, the language of this section was revised in the Order to disrupt that insurance. The section was revised in the Order to now read:

> "Except as provided herein, the first facilities-based interexchange carrier to which a completed coinless access code or subscriber toll-free payphone call is delivered by the local exchange carrier shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract." (47 C.F.R. § 64.1300(a) today)

As can easily be seen, this new language specifically identifies calls leaving a local exchange carrier's network and the carrier who would be responsible for paying the compensation, but the language of the section makes no mention of the calls that do not leave the local exchange carrier's network and whether the local exchange carrier should be liable for such calls. This topic is not mentioned anywhere in the Order, either. The Commission had previously concluded in its First Report and Order that "[a]ll carriers that receive calls from payphones are required to pay per-call compensation whether they are IXCs or intraLATA carriers." 11 FCC Rcd. at 20704, ¶ 341. If the new Order had not intended on modifying this policy, its codified regulation appears to have done just that for intralata carriers which are LEC's.

Additionally, the new language specifically names "the local exchange carrier" as the party who must deliver the call to the IXC for a call to be compensable by the IXC. This is ambiguous because it is quite possible in today's ever-changing competitive marketplace for a call to involve more than one LEC. Some IXC's may take the temping position to interpret the meaning of the section to be that the local exchange carrier who provides dial tone to the payphone must deliver the call to the IXC in order for the call to be eligible for compensation.

Today many PSP's purchase local exchange service (dial tone) from CLEC's, but it is not typically the CLEC who delivers calls to the IXC, but rather a different LEC entirely. Most CLEC's are incapable of delivering calls directly to an IXC because in order to do so they would probably have to operate an access tandem switching facility of their own, an endeavor that would seemingly be cost prohibitive. Instead, it has been Bulletins' observation that CLECs generally rely on the services of the incumbent LEC under contract to utilize the incumbent LEC's access tandem switching facilities as a gateway to deliver calls to interexchange carriers as well as other local exchange carriers who have a presence in the same local network (LATA).

Therefore a second undesirable side effect of the revised language for this code section is to leave a door wide open for interexchange carriers to have an excuse for exempting from dial around compensation a portion of the calls routing through their networks. The carrier can now claim that calls must be delivered directly by "the local exchange carrier" providing local dial tone to the PSP's paystation, just as the code section 64.1300(a) implies. In other words, calls originated from most CLEC's would not be eligible for compensation since the CLEC doesn't deliver the calls to the IXC. As this interpretation would cause a disruption of the all encompassing "each and every call" qualifier of the statute, it is evident that the Commission overlooked the ambiguity of the language before adopting the revised regulation via the Order.

PROPOSED SOLUTION

To resolve both issues outlined in this petition, Bulletins proposes to revise the language of the code section to read as follows:

> Except as provided herein, the first facilities-based interexchange carrier to which a completed coinless access code or subscriber toll-free payphone call is delivered by a local network shall compensate the payphone service provider. Completed subscriber toll-free coinless payphone calls not leaving a local network shall be compensated to the payphone service provider by the local exchange carrier who operates the access tandem switch to which such calls are routed. Compensation for the calls shall be at a rate agreed upon by the parties by contract.

This proposed revised language does not make any substantive changes to the newer policy adopted by the Commission, but it does resolve both of the issues addressed in this petition.

DISCUSSION

The RBOC Coalition's petition to reconsider the facilities-based reseller policy correctly noted that "the very purpose of Carrier Identification Codes is to provide routing and billing information for calls from end users via trunk-side connections to IXC's."[1] Indeed, most of this language is taken verbatim from the Carrier Identification Code Assignment Guidelines document published by the ATIS.[2] However, the CIC Assignment Guidelines document continues on to say, "Although LECs are not formal 'purchasers' of FG B or FG D access, these guidelines do not preclude LECs from being assigned CICs." (CIC Guidelines page 3). The RBOC Coalition petition made no mention of the CIC's used by the RBOCs themselves, nor was it evident that it would become an issue, because the petition was intended to merely clarify the facilities-based carrier issue, not challenge whether a LEC should be liable for calls terminated within their own networks.

The issue of LEC liability was evidently not presented in comments filed by parties during the pleading cycle that led to the adoption of the Order, either. This is not surprising, since the Commission Notice inviting comments only said that the pleading cycle was established to seek comment on "[t]he issues raised in Petitioner's request for clarification[.]"[3] Therefore, PSP's could not have predicted the side effect destined to occur at the Commission's Ruling on the Petition, and were thus not afforded an opportunity to defend the LEC liability issue.

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[1] See RBOC Coalition's Petition for Clarification, dated 2-26-99, received by the Commission 2-26-99. This quotation taken from page 4

[2] The ATIS is the Alliance for Telecommunications Industry Solutions, 1200 G Street NW, Washington DC 20005, telephone (202) 628-6380. The CIC Assignment Guidelines is published as document INC 95-0127-006 by the Industry Numbering Committee, a forum of the ATIS's Carrier Liason Committee. The language is taken from Section 1.2 of the document on page 2.

[3] See Public Notice dated April 15, 1999, Delegated Authority #DA 99-730

As given by the CIC Assignment Guidelines, and mentioned above, LEC's are not precluded from being assigned CIC's. The most common such assignment is given to CIC 0110, which by definition is used for "tandem access for database query."[4] Because the calls at issue are the "1-800" calls terminated without leaving a local exchange network, it is desirable here to refer to documentation proving that the LEC's do participate in the routing of "1-800" calls – calls for which they should remain liable to pay dial around compensation. The simplest reference is the SMS/800 Functions Tariff FCC No. 1, page 10. There the tariff declares technical publications related to the operation of the SMS/800 system. Of the publications listed, one that discusses the use of CIC 0110 is the 800 Service Management System User Guide: 800 Service Management, published by Telcordia Technologies, Inc. Page 2-82 of the Service management guide provides a sufficient description of CIC-0110 as an OTC (Operating Telephone Company) code used for intralata routing – routing, of course, related to SMS/800, or the "1-800" calls.

In the spirit of the Second Order on Reconsideration to reduce uncertainty of which specific carrier is liable when more than one carrier may be involved with a call, the Commission, if it desires to resolve the LEC liability issue, should do so by imposing the payment obligation on the clear carrier of record for these local network calls. This would avoid potential controversy over which LEC may be liable for the intralata calls, e.g. the ILEC, the CLEC, or an ILEC who terminates a call that originates from a different ILEC. This can be accomplished by heeding the definition given to CIC 0110 by the NANPA, and identify the access tandem switch provider as the carrier of record. This policy would leave out any controversy as to who the liable party is that should pay the dial around compensation for intralata LEC calls. Ironically, the Order set

[4] Provided for by the North American Numbering Plan Administration (NANPA), who acts as the CIC administrator. The individual in charge of such assignment at NANPA is Nancy Fears, telephone (202) 533-2653, who can confirm the assignment of CIC 0110.

out to correct controversy among carriers determining whether they are liable. The Order corrected the situation on one hand, but caused it all over again on another, as outlined in this petition. Luckily, as Bulletins statistics show below, the LEC liability issue does not threaten to impose as dramatic a financial impact on the PSP's as the facilities-based reseller issue did. But the possible controversy over calls originated at payphones served by CLEC's clearly would pose a much larger financial threat to the payphone service providers. Because of the nature of the two issues addressed in this petition, the Order warrants immediate clarification.

Since incumbent LECs provide termination for CIC 0110 calls for 800 numbers controlled by other incumbent LECs within the same LATA and occasionally for 800 numbers controlled by IXCs, such calls never leave the local network and the access tandem switch provider should therefore be considered the facilities-based carrier of the call. Even if such a call were to be terminated into a local exchange operated by another ILEC, the other ILEC is not the carrier to whom the call initially routed the from the payphone. Therefore, since there can only be one unique access tandem switch assigned from a given local exchange; and since there is an industry-wide publication issued by Telcordia Technologies known as the Local Exchange Routing Guide ("LERG") for the purpose of identifying local exchange routing, including the identification of the access tandem switch to which any local exchange routes calls; and since toll free calls identified by CIC 0110 are directed to the access tandem switch for processing; there can be no doubt about who the carrier of record is for the purpose of determining liability for the intralata terminated 1-800 calls if the access tandem switch provider is observed. In the event the local exchange carrier is a CLEC who has a contractual obligation to route calls other than as specified in the LERG, they should be required to disclose such arrangements to the PSP's so that the PSP's could correctly identify the access tandem switch provider.

As Bulletins is in the business of call tracking for payphone service providers, it offers here to quantify what sort of impact the LEC liability issue could have on payphone providers. To do so, real data is presented as illustrative for the LEC liability discussion. Bulletins' most recent 4th Quarter 2000 dataset reveals that tracking was performed for 10,026 payphones generating 4,810,375 "1-800" calls that appear to be completed. Of those calls, 112,996 were identified as not leaving the local exchange network, as given by their CIC code 0110. Though the volume of LEC terminated calls from these payphones appears to represent less than five percent of the aggregate "1-800" volume, it is nevertheless a significant amount of calls that is threatened to be exempt from compensation. And since Bulletins observes many PSP's using CLEC's to provide dial tone, a much larger amount of calls are also threatened to be exempt from the payphone compensation.

For the foregoing reasons, the undersigned hereby submits this Petition for Clarification of the Second Order on Reconsideration in Common Carrier Docket 96-128 and asks consideration for this Petition to be deemed exigent and dealt with accordingly.

Dated this 16th day of April, 2001

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Paul Brooks, hereby certify that on this day, I caused copies of the foregoing Petition For Clarification to be served upon the parties on the attached service list by first-class mail or, where indicated by asterisk, by hand delivery.

Dated: April 16, 2001

Paul Brooks

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